

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

ANTICIPATORY BAIL APPLICATION NO.1388 OF 2021

Gorakh Arjun Deshmukh

... Applicant.

Versus

The State of Maharashtra and Anr.

... Respondents.

...

Mr. R. V. Gore, Advocate for the Applicant.

Mr. A. M. Phule, APP for the Respondent – State.

Mr. N. B. Narwade, Advocate for the Respondent No.2

CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 9th FEBRUARY, 2022

PRONOUNCED ON : 17th MARCH, 2022

ORDER :

1. The applicant is apprehending his arrest in connection with Crime No.I-735 of 2021 registered with Newasa Police Station, Tq. Newasa, Dist. Ahmednagar for the offence punishable under Sections 363, 354(D), 306 of Indian Penal Code and under Section 12 of the Protection of Children from Sexual Offences Act, 2012.

2. Heard learned Advocates Mr.R. V. Gore for the applicant, learned APP Mr. A. M. Phule for the respondent – State and learned Advocate Mr. N. B. Narwade for the Respondent No.2.

3. It has been vehemently submitted on behalf of the applicant that the applicant is innocent and has not committed any offence. He has not instigated the deceased minor girl for committing suicide. Initially, FIR was lodged when the minor girl went missing for the offence punishable under Section 363 of IPC, but thereafter it appears that when accidental death was reported and supplementary statements were recorded; informant and the witnesses have developed story that the applicant was harassing her on the count that the minor girl should marry him. He was contacting personally as well as on mobile to the deceased. It was further alleged that the applicant had threatened the minor girl that if she does not perform marriage with him, she would be defamed. Due to this mental torture she committed suicide.

4. It has been further submitted that, initially the FIR lodged against unknown person. The age of the deceased was close to 18 years and she was student of 11th Standard. According to the applicant, the girl was major and was having understanding capacity. The informant had assaulted the minor girl, when she came to know that there is love affair between the applicant and the daughter. Due to the said assault, the minor girl might have committed suicide. In fact there was no communication between the applicant and the deceased since last two months prior to the FIR. The applicant is making a statement that the informant's husband was agreeable for the marriage between the deceased and the applicant, but it was to be performed

after some days, but the informant was opposing the marriage though the applicant is from the same caste. It was unfortunate that the deceased has expired, but no offence has been committed by the applicant. This Court has protected the applicant by Order dated 25th November 2021 and that order deserves to be confirmed.

5. Per contra, the learned APP as well as learned Advocate for Respondent No.2 strongly opposed the application and submitted that it was due to the harassment of the applicant, the victim who was 15 years old was driven to commit suicide. She went missing from house on 24th September 2021 and therefore the FIR under Section 363 of IPC was lodged on 25th September 2021. Her dead body was found on 26th September 2021 around 8.30 a.m. in the well nearby to the house of the informant. The post mortem report shows the probable cause of death as 'due to drowning'. The applicant was insisting that the girl should marry him and therefore in fact he had kidnapped her from the lawful guardianship of the informant. When she found that threats were given to defame the victim and because of the poverty of the parents, it appears that she has committed suicide. It amounts to abatement of the same by the applicant. The custodial interrogation is therefore necessary to see where he had taken her for about two days. The informant has also filed the affidavit-in-reply to object the application.

6. At the outset, it can be said that, it is very much unfortunate that

a girl aged around 15 years has committed suicide. No doubt, whether it was suicide or an accidental death would be the matter to be proved or rebutted by the prosecution/accused at the time of the trial. However, the facts stand as on today would disclose that not section 306 but 305 of IPC would be attracted, in view of the fact there is a specific provision in respect of driving the minor to commit suicide. The informant – mother lodged FIR on 25th September 2021 stating that some unknown person has kidnapped the minor. No prior acts if known to the mother in respect of applicant's acts were disclosed in the same, but thereafter the dead body was found in the well of one Sopan Bhimraj Agale adjacent to the house of the informant. It was taken out on 26.09.2021. That means from 24.09.2021 to 26.09.2021 there was no contact between deceased and the family members including the informant then the question arises as to how they could have come to know about the reason for committing suicide by the deceased. This scenario allows this Court to have two inferences; one that though the informant was knowing something in respect of the applicant and the deceased yet did not disclose it before the police when she lodged the FIR on 25th September 2021 and the Second possibility is about the involvement of the applicant with some ulterior motive. After the dead body was found everybody is blaming the applicant and even disclosing that the applicant had put proposal of marriage between him and deceased before the family members. They say that they had refused the proposal, but thereafter the applicant was insisting deceased that she

should accept the proposal and tried to contact her on the mobile. A statement of the grandparents of the deceased would disclose that it was the proper proposal that was made before the family members by the applicant may be under a mistaken fact that the girl is major.

7. Grand parents have not stated that they had refused the proposal by saying that the girl is still minor. The question therefore comes is as to whether the applicant had the knowledge that the girl was still a minor. For abating the commission of suicide there should be contact between the applicant and deceased. The police papers show that there is no such statement of a witness stating that he/she had seen the applicant talking to deceased on 24th September 2021 or just prior to that. The post mortem report as on today does not give the time of death. It is stated that the rigor mortis was well marked and there were signs of decomposition. It would be for the prosecution to prove then when deceased committed suicide. If it was prior to or around 12.00 p.m. on 24th September 2021 then the allegations about the kidnapping may not stand. It would be directly the case of suicide. Therefore, taking into consideration all these aspects the custodial interrogation of the applicant does not appeared to be required.

8. The Interim protection granted earlier deserves to be confirmed. Hence the following order is passed :-

O R D E R

- (i) The application is allowed.
- (ii) The interim protection granted by this Court on 25th November 2021 stands confirmed. It is clarified that in the event of arrest of applicant - Gorakh Arjun Deshmukh in connection with Crime No.I-735 of 2021 registered with Newasa Police Station, Tq. Newasa, Dist. Ahmednagar, he be released on bail on PR Bond of Rs.20,000/- (Rupees Twenty Thousand Only), with one or more sureties in the like amount, if already not released.
- (iii) Applicant shall attend Newasa Police Station, Tq. Newasa, Dist. Ahmednagar, on every Thursday between 2.00 p.m. to 5.00 p.m. till filing of the charge-sheet and co-operate with the investigation.
- (iv) Applicant shall not tamper with the evidence of the prosecution in any manner.

(SMT. VIBHA KANKANWADI, J.)